THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO.10038 OF 1998

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DATED: 10.11.2005

Between:

Qazi Khaja Mohiuddin

... PETITIONER

AND

The Secretary to Govt.,

Minorities Welfare (WAKF-I) Department,

Secretariat, Hyderabad & 3 others.

... RESPONDENTS

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO.10038 OF 1998

ORDER:

Questioning the Memo No.2572/Wakf-I/A3/97-5, dated 23.03.1998, of the Secretary to Govt., Minorities Welfare (WAKF-I) Department, Government of A.P., (1st respondent) rejecting his application for appointment as Qazi of Gadwal and seeking a direction to the 1st respondent to appoint him as the Qazi of Gadwal, as per the recommendation made by the District Collector (3rd respondent), petitioner filed this petition.

2. The case of the petitioner is that 4th respondent, who is the Qazi of Gadwal, appointed him as a Naib Qazi and went abroad several years back and settled there and since his request for appointment as Qazi is not being considered he filed W.P.No.4247 of 1997 in which this Court by the order dated 4.4.1997 directed the 1st respondent and the A.P. Wakf Board, of which the 2nd respondent is the Chief Executive Officer, to consider and dispose of his representation for appointment as a Qazi and in compliance with that direction first respondent called for the remarks from the 2nd respondent, who in turn made a request to the 3rd respondent to make a detailed enquiry and submit a report, and though 3rd respondent recommended his appointment as Qazi, 1st respondent erroneously rejected his claim by the memo impugned.

3. In W.P.M.P.No.12202 of 1998 filed by the petitioner seeking a direction to the 2nd respondent to issue marriage booklets to him, an interim direction as sought was given in his favour.

4. Assistant Secretary, Minorities Welfare Department, filed her counter-affidavit on behalf of the 1st respondent *inter alia* alleging that inasmuch as 4th respondent submitted his explanation denying the allegation made against him by the petitioner, in response to a notice issued to him, and since the A.P. Wakf Board in its report stated that petitioner failed to produce proof to show that he is discharging the duties of Qazi, application of the petitioner for appointment as Qazi was rejected by the memo impugned.

5. The case of the 2nd respondent is that petitioner failed to produce proof of his working as Qazi in spite of notice and several reminders issued to him, that fact was reported to the first respondent. No counter or affidavit is filed on behalf of the 3rd respondent.

6. Along with the petition to vacate the interim direction given in W.P.M.P.No.12202 of 1998, 4th respondent filed his counter affidavit disputing the allegation that he left India for good, and admitting that he appointed petitioner as Naib Qazi and asserting that he has been performing the duties of Qazi to the satisfaction of the entire community and contending that petitioner who bore grudge against him made false statements, and has been receiving the letters addressed to him by influencing the postal authorities and that the revenue officials, without conducting any enquiry whatsoever, sent a false report that he left Gadwal ten years back and settled at Saudi Arabia, and that marriage booklets are being issued to him by the A.P. Wakf Board.

7. It is relevant to mention that the vakalat and the counter affidavit filed by the 4th respondent contain the signatures of the same attesting officer, who is said to be an Advocate. But the attesting advocate did not mention his name or registration number. So it is not possible to know who the attesting advocate of the vakalat and counter affidavit of the 4th respondent is. Petitioner filed his reply affidavit disputing the averments in the counter affidavit of the 4th respondent that he is residing at Gadwal and is discharging the duties of Qazi and is being issued marriage booklets by the 2nd respondent.

8. This petition is being posted for hearing from several days and for no hearing is the counsel for the 4th respondent present. For that reason also I could not verify who is the attesting advocate of the vakalat and counter affidavit of 4th respondent. Since the averment in the affidavit of the petitioner that 4th respondent is not residing at Gadwal is corroborated by the report of the 3rd respondent, and since the counsel for the 4th respondent is not present for any hearing, by the order dated 31.10.2005 I directed summons being issued to the 4th respondent through the District Judge, Mahaboobnagar, with a direction to send the served or un-served copy of the summons with the report of the serving officer. The District Judge, Mahaboobnagar, though his letter dated 08.11.2005 reported that the serving officer returned the notice un-served, with his report the learned District Judge enclosed the report of PC.No.390, who was entrusted with the duty of service of the notice on the 4th respondent, and also the confirmation certificate of the Municipal Councilor of 15th Ward of Gadwal Municipality. The report of PC.390 reads:

Sd/-

PC No.390

Court Lisen Constable

M.Nagar

The confirmation certificate issued by L.Srinivasulu, Councilor, 15th Ward, Gadwal Municipality enclosed to the said report reads as under:

[image]

Sd/-

K.SRINIVASULU

15th Ward Councilor

GADWAL-509 125.

In view of the above reports, *prima facie* it is clear that 4th respondent is not residing in the 15th Ward from the last 15 years.

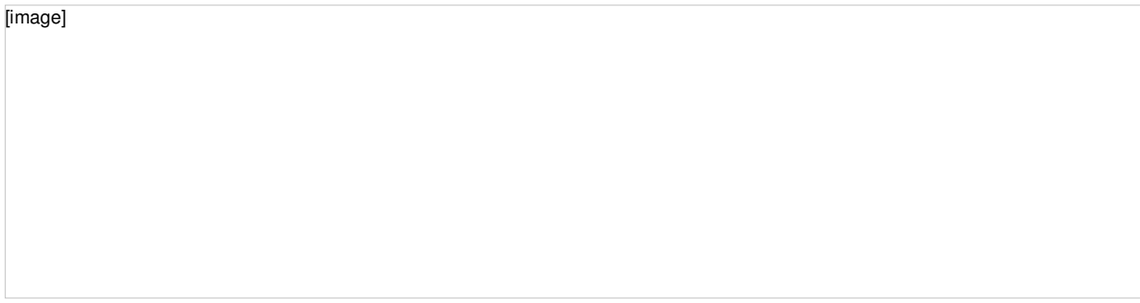
9. On my direction the learned Government Pleader and the learned Standing Counsel for the A.P. Wakf Board produced the relevant files and I have perused those files. The file produced by the learned Government Pleader shows that on the representations of the petitioner, 1st respondent requested the 3rd respondent to serve the notice on the 4th respondent for his explanation or comments. 3rd respondent through his letter No.B2/9357/1997, dated 24.12.1997, sent to the 1st respondent, the served copies of the Memo No.2572/Wkf/I/B/97-2, dated 08.11.1997, along with a copy of the explanation submitted by the 4th respondent. The served copy contains the following endorsement.

[image]

Sd/-

13/12

MRI: GADWAL

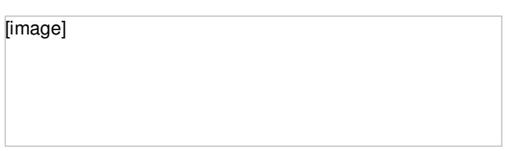
[image] 

1. Sd/-

   13-12-97

2. Sd/-

   13-12-97

[image] 

3. Sd/-

(Since the individual concerned (i.e., 4th respondent) is not residing at Gadwal from 10 years past notice is affixed to the house where he resided earlier).

In spite of the above endorsement that 4th respondent is not residing at Gadwal since 10 years past, explanation said to have been submitted by the 4th respondent is found in the file. In view of the endorsement of the serving officer, on the notice sent to the 4th respondent, the person who received the explanation, said to be that of 4th respondent, ought to have made a note on the said explanation, whether it was submitted by the 4th respondent in person or through somebody else. Since the proceedings recorded in the file maintained in the A.P. Wakf Board are in Urdu, which I cannot read or write or speak, on my request the learned standing counsel for the A.P. Wakf Board translated those proceedings to me in English. The file shows that a letter, enclosing a copy of the representation of the petitioner submitted in pursuance of the order dated 04.04.1997 in WP.No.4247 of 1997 of this Court, was sent to "Md. Khaza Musharuddin, borther of Qazi Rafiuddin, acting Qazi, Office of the Qazi, R/o. Gadwal, Mahaboobnagar District" for his remarks or comments, by registered post acknowledgement due and that it was returned un-served with an endorsement "Left". The file also contains the letter dated 10.09.1997, written by the said Khaza Musharuddin to the 2nd respondent reading:

"Date: 10.09.1997

Hyderabad.

To

The Secretary,

A.P. State Wakf Board,

Public Garden Road,

Nampally, Hyderabad.

Sub:- Request to issue the A.P. Wakf Board notice on home address of Hyderabad.

Sir,

I, Khaza Muzharuddin, am a resident of (H.No.17-2-25/23/A, Raiti-ki-Masjid, Yakutpura) Hyderabad. I am a brother of acting Qazi of Gadwal (Tal) of Mahaboobnagar (District). my brother Qazi Rafiuddin is acting Qazi. When I had been to Gadwal, I came to know that there was a notice from A.P. State Wakf Board, because I am in Hyderabad, so I did not get the issued notice. So please dispatch the issued notice on the address given below.

Thanking you.

Your's faithfully,

Address:

K. Mazharuddin Sd/-

Raiti-ki-masjid K. Mazharuddin,

Yakutpura-Hyderabad Tel. 4411018"

The reason for marking a copy of the representation of the petitioner to the Khaza Muzharuddin, brother of the 4th respondent for his comment, is not explained in the affidavit of the 2nd respondent. Significantly, the file produced before me does not show that any letter, in fact, was addressed to the 4th respondent for his comments on the representation of the petitioner. The fact that notice calling for comments or remarks on the representation of the petitioner was sent by the A.P. Wakf Board to the brother of the 4th respondent, but not to the 4th respondent shows that person(s) concerned is the A.P. Wakf Board know about the absence of the 4th respondent and that he or they also know that the brother of the 4th respondent Mazhuruddin in fact is looking after the affairs of the 4th respondent, during his absence.

10. On my direction to the A.P. Wakf Board, the learned standing counsel for the A.P. Wakf Board produced the register relating to issuance of marriage booklets (Siahanamas) and shiazeds. Since they are in Urdu, the learned standing counsel, after going through the said registers, informed me that those registers disclose issuance of the marriage booklets and shiazeds to Mazharuddin (brother of the

4th respondent) and to the petitioner, and that those records do not show that 4th respondent himself took the booklets. If the 4th respondent is in India, he himself would have taken the booklets.

11. It is also relevant to state that the notice in this writ petition sent to the 4th respondent by registered post was returned un-served with an endorsement "absent". He entered appearance through an advocate, and filed a vacate stay petition. Since 4th respondent is not in the village and since his brother Mazharuddin is acting on his behalf in this writ petition, who could have acted on behalf of the 4th respondent can easily be inferred.

12. The fact that petitioner is Naib Qazi is admitted. The registers of the A.P. Wakf Board shows that he is being issued marriage booklets and shiazeds. So calling for proof of his acting as Qazi is wholly unnecessary and unwarranted. In the Memo impugned it is stated that another Qazi cannot be appointed without removing the incumbent Qazi. The same is not a correct observation because, as per Section 2 of Qazis Act, one or 'more' fit persons can be appointed as Qazis for a local area. Similarly the other observation in the order impugned that 4th respondent sent a reply in response to the notice "served on him" is incorrect, in the sense that there was no personal service of notice on the 4th respondent, but was affixed to the house, in which he earlier resided about 10 years back. In view thereof, it is easy to see that the Memo impugned in this petition was issued in a routine and mechanical manner, without even applying the mind to the question whether the 4th respondent actually is present in India or not, and without keeping in view Section 2 of the Qazis Act also, and so the same is liable to be answered and hence, is set aside.

13. Before parting with the case, I must state that this is a fit case to cause an enquiry into the question whether the vakalat and the affidavit, said to be that of the 4th respondent, filed into Court, are really signed and sworn to by the 4th respondent or not. Since the counsel for the 4th respondent is absent and since the name of the advocate who attested the vakalat and the affidavit, said to be that of the 4th respondent, is not mentioned, for identifying the name of the advocate attestor of that affidavit or vakalat, I am of the opinion that it should be made incumbent on the attesting officer to clearly state his name and designation in the affidavit and the vakalat or other proceedings being attested by him for purpose of identification, in case of necessity. Therefore, the registry is advised to obtain orders from my lord the Chief Justice to return the affidavits, counter-affidavits and vakalats etc., which do not disclose the full name and address of the attesting officer.

14. As stated earlier since Khaza Muzahruddin, brother of the 4th respondent seems to be acting on behalf of the 4th respondent, it is necessary to find out if he has any role to play in these proceedings, and so 3rd respondent, with the help of the Superintendent of Police, Mahaboobnagar, shall cause an enquiry if the 4th respondent was at Hyderabad on 11.07.1998, and if the signature in the vakalat and counter-affidavit of the 4th respondent, filed along with WVMP.No.2041 of 1998, are that of the 4th respondent, and who actually instructed Sri V.Viswanatham, advocate, who filed the vakalat on behalf of 4th respondent in this petition, and submit a report in respect of these facts within one month from the date of receipt of a copy of this order. Registrar (Judicial) shall extend his cooperation to the 4th respondent in the said enquiry, by furnishing either original or copies of the documents required for investigation. For report and further necessary action, post this case on 24.01.2006.

15. Accordingly, the writ petition is allowed. The order impugned is set aside, and the case is remitted to the 1st respondent for reconsideration of the application of the petitioner keeping in view the report and recommendation of the Collector and the other relevant documents and the provisions of the Qazi Act. Parties are directed to bear their own costs. Mark copies of this order to the Collector, Superintendent of Police, Mahaboobnagar and also to the Registrar (Judicial) for compliance.

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10.11.2005

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